IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 73-2107	:	Appeal from the
	:	United States
In the Matter Of;	:	District Court
DAVID T. DELLINGER,	:	for the North-
ABBOTT H. HOFFMAN,	:	ern District of
JERRY C. RUBIN and	:	Illinois, East-
WILLIAM M. KUNSTLER,	:	ern Division.
	:	No. 72 CR 925
Defendants-Appellants.	:	EDWARD T. GIGNOUX, Judge.

HEARD APRIL 22, 1974--
DECIDED SEPTEMBER 6, 1974

Before FAIRCHILD, CUMMINGS and PELL, Circuit Judges.

CUMMINGS, Circuit Judge. This appeal is from the second criminal contempt adjudication resulting from incidents occurring during the celebrated "Chicago 7" Anti-Riot Act conspiracy trial. The substantive convictions were reversed. United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972), certiorari denied, 410 U.S. 970. We also reversed the original contempt convictions. In Re Dellinger, 461

F.2d 389 (7th Cir. 1972).

Pursuant to 28 U.S.C. §292, the Chief Justice of the United States thereafter designated District Judge Gignoux to try the contempt case.[1/] On the remand various pre-trial motions were denied. In re Dellinger, 357 F.Supp. 949 (N.D. Ill. 1973). At the trial, the Government's case-in-chief consisted of the introduction of the transcript of the Anti-Riot Act trial. After the Government rested, the district court acquitted John Froines and Lee Weiner and dismissed a number of contempt specifications against the remaining defendants in an unreported memorandum opinion dated November 6, 1973. The defendants' renewed motion to dismiss was denied in the same opinion. Thereafter, the remaining defendants testified

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1/ The original contempt convictions were summary adjudications. Those now under review were imposed after a full trial.

in their own behalf. In rebuttal the Government offered evidence to refute testimony of a defense witness that the "defense camp" had been subjected to surveillance by military intelligence officers during the Anti-Riot Act trial. At the close of all the evidence, defendants Leonard Weinglass, Rennard Davis and Thomas Hayden were acquitted. Judgments of acquittal were also entered as to several of the contempt specifications against the remaining defendants. The district court found David Dellinger, Abbott Hoffman, Jerry Rubin and William Kunstler guilty of various other contempts but did not impose any fines or sentences. In re Dellinger, 370 F.Supp. 1304 (N.D. Ill. 1973).

Whether Lawyer Kunstler Was Contemptuous.

The first argument on appeal is that Kunstler's conduct described in Kunstler specification VI does not constitute con-

tempt of court. This specification is set out at 370 F.Supp. 1337-1338[2/] and need not be quoted herein. The matter complained of in specification VI consisted of an extended outburst from Mr. K stler, one of the attorneys for the defendants, after Judge Hoffman, the trial judge in the conspiracy case, refused to relieve Kunstler of his commitment to conclude his case with the testimony of an authenticating cameraman, plus certain documents. Thus Mr. Kunstler was prevented from presenting the Reverend Ralph Abernathy as a witness for the defendants.

We agree with Judge Gignoux that the extent and violence of Kunstler's diatribe and the bitterness and anger displayed "constituted a vicious personal attack on the judge which could only have

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2/ In reproducing specification VI in 370 F.Supp., the words "The Court" were inadvertently omitted from the ninth line of the specification.

served to vent his spleen." 370 F.Supp. at 1319. In no way can Kunstler's remarks be considered as merely heated legal argument and therefore non-contemptuous. Because of the extreme nature of the attack on the trial judge, the remarks of counsel created an imminent prejudice to a fair and dispassionate proceeding, thus constituting an actual and material obstruction of the judicial process. See 461 F.2d at 400. Moreover, as the trial judge found, Kunstler's conduct "resulted in an entirely unnecessary and not insignificant delay and disruption of the proceedings" (370 F.Supp. at 1320), reinforcing his holding that there was an actual and material obstruction of the administration of justice. Before concluding with respect to this specification, it should be noted that at their close, Kunstler's remarks predictably precipitated shouts of

"right on" and applause, again satisfying obstruction standards.[3/] 461 F.2d at 399-400.

Kunstler's specification VII (reproduced at 370 F.Supp. 1338-1341) is also said not to constitute contempt of court. After Judge Hoffman had ruled that Reverend Abernathy not be permitted to take the stand, he ordered defense counsel not to make any reference before the jury to the fact that defendants wanted Abernathy to testify. Kunstler replied he would not abide by such a ruling and therefore would have to be sent to jail. Despite the trial judge's order, when Dr. Abernathy arrived Kunstler said he would like to put him on the stand. Kunstler contin-

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3/ Kunstler's remarks were also larded with interruptions of "Voices: Right On," but we do not rely on these interruptions in view of defendants' representation that the trial tapes show they were in a single soft voice emanating from a defendant or someone present at defense counsel's table. No such representation has been made with respect to

(fn. cont. next page)

ued to mention Dr. Abernathy's name and hugged him before the jury. The facts under this specification are clearly contempt because Kunstler violated a court order. Further, he obstructed justice by putting before the jury information that had been ruled inadmissible, making it more difficult for the jurors to decide the case according to the law as interpreted by the district judge. As we previously held, lawyers are required to obey even incorrect orders; the remedy is on appeal. 461 F.2d at 398.

Kunstler argues that because he got away with violating it once, there was no longer an operative order prohibiting his mentioning Dr. Abernathy to the jury. In our judgment, this is frivolous. Kunstler's renewal of his motion to call Dr. Abernathy

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(fn. cont. from preceding page)
the applause and shouts at the conclusion of Kunstler's comments.

as a defense witness in the presence of the jury and his persistent arguments after being directed to stop clearly violated Judge Hoffman's orders to make no reference before the jury to the fact that he and his colleagues wanted Dr. Abernathy to testify and not to renew his motion. Since the specification quotes Judge Hoffman's orders verbatim, there could be no doubt what Kunstler was charged with violating. Therefore, we are not "sustaining the trial court by treating the conviction as a conviction upon a charge not made." Eaton v. City of Tulsa, ___U.S. ___, 42 LW 3538; see also Taylor v. Hayes, ___U.S.___, 42 LW 5180, 5183-5184.

Whether Messrs. Dellinger, Hoffman and Rubin Were Contemptuous.

The non-lawyer defendants contend that the nine specifications involving statements made by them at the Anti-Riot Act trial and the two specifications in-

volving wearing judicial robes by Abbott Hoffman and Jerry Rubin do not constitute contempt.

The statements in question delayed the trial, thereby satisfying the obstruction requirement. Although in some of the specifications, one or two sentences may have been justified, each specification contained an extended colloquy not required by the circumstances. As Judge Gignoux stated with respect to Dellinger IV (reproduced at 370 F.Supp. 1327), in light of the extent of these Dellinger comments at the Anti-Riot Act trial and their offensive character, he knew or should have known that his conduct was wrongful, and his interruptions "so disrupted the course of the proceedings that an unnecessary and not insubstantial delay ensued." 370 F.Supp. at 1312. Similar permissible findings were made with respect to Dellin-

ger V, VI, VII, VIII, IX and X (reproduced at 370 F.Supp. 1328-1335, 1341-1342).

As to Abbott Hoffman's specification VI and Jerry Rubin's specification V (reproduced at 370 F.Supp. 1344-1347), the district court was justified in concluding that these defendants' persistent interjections occasioned a substantial delay in the progress of the proceedings and constituted misbehavior in the presence of the court. 370 F.Supp. at 1314-1315.

Hoffman specification VII and Rubin specification VI (set out at 370 F.Supp. 1347-1348) involved the wearing of judicial robes by those defendants at the February 6th morning session of the Anti-Riot act trial. As the district court found, the Anti-Riot Act trial transcript disclosed that this conduct occasioned an entirely unnecessary and not insignificant delay in the proceedings. 370 F.Supp. at

1315. The seriousness of this misbehavior supported the district court's conclusion that the conduct constituted an actual and material obstruction of the administration of justice. See United States v. Seale, 461 F.2d 345, 369 (7th Cir. 1972).

Imposition of Sentence on Mr. Kunstler Was Unrequired.

Defendant Kunstler asserts that Judge Gignoux could only acquit or dismiss the charges and not convict him without imposing a sentence. This is a misapprehension of the law. A judge trying a criminal contempt case may find violations and nevertheless impose no sanctions. See United States v. Dickinson, 465 F.2d 496, 513 (5th Cir. 1972). We see no reason why the judge must dismiss to achieve this result, though that option is open at least to the court which initiated the contempt proceeding. See United States v. Barnett, 346 F.2d 99 (5th Cir. 1965) (en

banc). Whether or not we disagree with the non-sentence is immaterial, for the trial judge was within his rights in convicting but refraining from imposing punishment.

Kunstler attaches significance to the fact that the trier of contempt adverted to "the potentially grave consequences of a criminal contempt conviction to a member of the bar" (370 F.Supp. at 1322). This remark simply recognized a factual possibility over which the judge had no control; it certainly does not amount to an exercise of disciplinary powers nor an invitation for disciplinary proceedings to be commenced in the New York courts. Therefore, the district court did not exceed its criminal contempt power in this respect.

Conduct of Conspiracy Judge and Prosecutors Does Not Necessitate Reversal.

Defendants contend that the conduct

of the judge and prosecutors at the Anti-Riot Act trial requires dismissal for their contempt. We have twice rejected this contention in the Seale and Dellinger contempt cases. See 461 F.2d at 361-363, 401. Nothing in this contempt trial persuades us to alter our prior conclusion for provocation, however shocking, is no defense to contempt.

Adequacy of Falk-type Hearing.

Defendants urge that their motion to dismiss should have been granted under United States v. Falk, 479 F.2d 616 (7th Cir. 1973) (en banc) because the Anti-Riot Act prosecutors were not also charged with contempt. In its unreported memorandum opinion overruling defendants' motion to dismiss, the district court refused to apply Falk because defendants failed "to support their allegation that the prosecution of the present charges amounts to a discri-

minatory and unconstitutional prosecution" The court then concluded that defendants had not made a satisfactory showing that the "United States, on behalf of the [Anti Riot Act] court, has pursued the present prosecution for discriminatory and unconstitutional purposes." Judge Gignoux reaffirmed these findings at the close of the evidence (Tr. 4150).

Defendants' reliance on Falk is misplaced. That case was remanded so that the defendant could have a hearing on his claim of selective prosecution. Here such a hearing took place when United States Attorney Thompson gave more than fifty pages of testimony on this subject. His account satisfied the district court and now us that the Government had a rational basis for prosecuting the case. No further hearing is needed.

Electronic Surveillance

Defendants assert that the Government's electronic surveillance of defendants and their counsel should have been disclosed to them before trial, and that there should have been an evidentiary hearing with respect to the impact of the surveillance. In the district court, the Government agreed to turn over to defendants any such material which might infringe defendants' Sixth Amendment right to counsel, any such material that might be exculpatory under Brady v. Maryland, 373 U.S. 83, and any material disclosure of which was required by Alderman v. United States, 394 U.S. 165, 357 F.Supp. at 957, 960, n.14.[4/] Our order of May 1, 1973, in denying defendants' April 18, 1973 petition for writ of manda-

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4/ Because of Judge Gignoux' decision in its favor, the Government abandoned its initial undertaking to turn over Alderman material to defendants.

mus with respect to electronic surveillance, was fashioned to enforce the first two parts of this governmental undertaking. However, no such material was discovered. As the United States Attorney for the Northern District of Illinois advised Judge Gignoux and defendants on May 23, 1973:

> As in the past, we recognize our obligation to turn over any surveillance that can be classified as exculpatory or capable of infringing upon the sixth amendment rights of these defendants to defend against the pending contempt charges. However, we are presently unaware of any surveillance material that can be so classified.

Brady v. Maryland does not entitle defendants to an adversary hearing with respect to such materials.

In accord with acceptable procedure,[5/] government counsel furnished the district court with an affidavit that there was no

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5/ See Korman v. United States, 486 F.2d 926, 931 (7th Cir. 1973).

surveillance of defendants or their counsel during the period of their 1969 Anti-Riot Act trial. The district court and we in turn have found that the overhearings submitted *in camera* show no communications between defendants and their counsel during, before and since that trial. See 357 F.Supp. at 960, n.15.

The Government turned over to Judge Gignoux for his *in camera* inspection logs of all overhearings requested by defendants' disclosure motion. See 357 F.Supp. 957, n.12 and 960, n.15. Subsequently, the Government turned over to the district judge additional logs in which defendants Froines' and Davis' voices were identified, after which the surveillances were cut off in accordance with the July 14, 1969, instructions of the Attorney General.[6/] After

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6/ From our examination of the logs, it is apparent that, consistently with the Attorney General's instructions, the wiretapping ceased when defendants or their counsel were identified.

the oral argument before us, in accordance with our order of May 7, 1974, the Government supplied still additional logs to us for in camera inspection. These included Anti-Riot Act trial period communications of Messrs. Davis and Dellinger that had not been discovered until after the district court's judgment. Although some of the defendants were overheard in those logs, the logs have nothing to do with the Anti-Riot Act or contempt cases.

The district court held that Alderman v. United States, 394 U.S. 165, did not require an evidentiary hearing to determine the relevancy of the logs because the Government was relying on the transcript before Judge Hoffman to show defendants contempts. Therefore, the Government's evidence could not have been derived from the overhearings. 357 F.Supp.

at 958-960.

To rebut this reasoning, defendants assert that the logs might have helped in their defense of lack of intent. We have examined all the logs; none of them relates to defendants' intent. This case is therefore distinguishable from the Seale case where one of the logs "was a link in a communication from a lawyer to Seale advising him with respect to his conduct in court." 461 F.2d at 364. Seale could use the log on remand to show his state of mind and motivation at the time of the conduct, so that a taint hearing was necessary. 461 F.2d at 365-366. Here, on the other hand, no such overhearings occurred. Furthermore, if a log with respect to defendants' lack of intent had been uncovered, the Government was obliged to tender it to defendants in accordance with its express undertaking

(357 F.Supp. at 960, n.14), which this Court further obligated the Government to follow in our order of May 1, 1973.

Defendants rely on United States v. Huss, 482 F.2d 38 (2nd Cir. 1973). There government informer Siegel had been overheard illegally by the United States on six different occasions. When the Government attempted to use Siegel as a witness at the criminal trial of two others, he refused to testify despite an immunity grant. He successfully relied on the Second Circuit rule that the Government cannot rely on testimony of a witness discovered through illegal taps. The civil contempt order entered against him was vacated because the Government's destruction of the tapes of his overheard conversation prevented disclosure and an Alderman hearing. No comparable situation is presented here where these defendants

were tried for their misconduct in open court rather than for any refusal to testify. Here the Government is not relying on possibly tainted evidence, so that Huss is inapt.

Defendants have relied on Dellinger v. Mitchell, Civil Action No. 1768-69 (D. D.C.) and their in camera disclosures to us growing out of that pending case to buttress their electronic surveillance arguments. Our review of that material and of Mr. Kunstler's affidavit concerning United States v. Means, 374 F. Supp. 321 (D.S.D) and Judge Nichol's opinion denying defendants' motion to dismiss therein 7/ do not persuade us that the Government has misrepresented the status of the wiretaps here. Nothing in any of the wiretaps supports defendants' assertion

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7/ The opinion was filed with us by defendants on April 22, 1974.

that the Government thereby molded its approaches to create a picture of disruption by defendants at the Anti-Riot Act trial. In no sense can the transcript of that trial be considered the fruit of any illegal surveillance.

As the district court held, the limited nature of the evidence offered by the Government "precludes the possibility that it could be inadmissible because the produ of any illegal interception." 357 F.Supp. at 961. Since the evidence offered did not and could not have come from any electronic surveillance, disclosure of the electronic surveillance records to defendants and an Alderman hearing were unnecessary.

Quashing the Subpoenas to the Army and the Federal Bureau of Investigation.

In an attempt to show that the Government had harassed the defense during the Anti-Riot Act trial, defendants introduced the testimony of John O'Brien,

a former military intelligence agent. We have reviewed that testimony and are satisfied that Judge Gignoux could reasonably conclude, as he did, that Mr. O'Brien's testimony should be rejected as "utterly incredible."

In order to attempt to corroborate O'Brien, the defendants served subpoenas on Brigadier General Patton, Deputy Chief of Military Intelligence of the Army, and on Richard G. Held, the Agent in Charge of the FBI's Chicago office. In general, these subpoenas called for all of O'Brien's reports from March 1969 to March 1970 as well as reports of others possibly engaged in surveillance of defendants and their counsel. The FBI filed an affidavit that none of the subpoenaed reports could be found in its search. A similar certificate was filed by the Army. However, both agencies submitted documents in camera

to Judge Gignoux. After examining the documents, the district court concluded that "the submissions both submitted by the Federal Bureau of Investigation and by the Pentagon contained no reports, records or other material which in any way related to any surveillance of the defendants or their counsel during the period March, 1969, to March, 1970, or which in any way are material or relevant to any of the issues before the Court in the present proceeding" (Tr.4156). The Government's motions to quash the subpoenas were therefore granted.

In view of the court's finding that none of the submitted material was relevant or material, it was permissible to quash the subpoenas. See United States v. Escobedo, 430 F.2d 603, 610, n.7 (7th Cir. 1970); 2 Orfield, Criminal Procedure under the Federal Rules §17:82 at 666

((1966). The district court also refused to grant the defendants' motion for an order compelling General Patton and Mr. Held to testify. Because of the affidavits of the records custodians that the desired search had been made, there was no necessity to receive testimony from them. In fact, Rule 27 of the Federal Rules of Criminal Procedure was designed to obviate such testimony.[8/] United States v. Rogers, 454 F.2d 601, 605 (7th Cir. 1971). Furthermore, the refusal to compel testimony from General Patton and Mr. Held was supported by the court's finding that defendants had not made the requisite "showing of illegal surveillance or infiltration of the defense camp."

8/ Rule 27 incorporates by reference Rule 44 of the Federal Rules of Civil Procedure. Rule 44(b) authorizes the receipt of appropriate written statements as evidence that the records do not contain requested materials.

Since the district found on the basis of the entire record beyond a reasonable doubt that "there was no surveillance, infiltration or intrusions into the councils * * * of the defense during the period of these [Anti-Riot Act] proceedings; that is between March of 1969 and March of 1970" (Tr.4153), we conclude that its rulings as to the subpoenas and the custodians of the documents were correct.

Right to a Jury Trial.

Defendants have renewed their contention that they were entitled to a jury trial. At a pretrial conference the district judge granted the Government's motion to limit the maximum sentence imposable against each defendant to 177 days imprisonment. See 357 F.Supp. at 955. Since this meant that no defendant would serve more than six months' imprisonment, a jury trial was unnecessary in accordance

with our holding on the prior contempt appeal. 461 F.2d at 397; see also Taylor v. Hayes, ___ U.S. ___, 42 LW 5180, 5183; Codispoti v. Pennsylvania, ___ U.S. ___, 42 LW 5175, 5177; United States v. Seale, 461 F.2d 345, 356 (7th Cir. 1972).

Defendants insist that they were entitled to a jury trial as a matter of discretion even if not as a matter of right. For the reasons articulated by Judge Gignoux (356 F.Supp. at 956), there was no abuse of discretion in declining to order a jury trial.

The Convictions Need Not Be Set Aside to Insure the Appearance of Justice.

The defendants' final point is that the entire record of this case indicates that the judgment below must be reversed to preserve the appearance of justice. We cannot agree.

Upon remand, the appearance of justice was fully satisfied. First of all, the Chief Justice appointed a fair-minded judge from another jurisdiction who had nothing to do with the original contempt adjudications or the conspiracy trial. When we reversed the original contempt convictions, we deemed eighteen of the original contempt specifications and part of another to be legally insufficient. 461 F.2d at 400-401. This left 141 of the specifications for possible trial. However, the Government dismissed 89 of those unilaterally, leaving only 52 of the remanded contempt charges for trial. 370 F.Supp. at 1307. At the conclusion of the Government's case, the court dismissed two of the specifications and acquitted the defendants of 24, so that on-

ly 26 specifications remained. Idem. At the completion of the trial, defendants were found not guilty of thirteen specifications. 370 F.Supp. at 1323. Thereafter the present defendants were found guilty of the charges in only thirteen specifications. 370 F.Supp. at 1323-1324. This drastic winnowing process surely demonstrates the dispassionate nature of the trial.

Having reviewed the record herein, we conclude that defendants received sufficient procedural fairness to satisfy the appearance of justice. To insure continuing respect for the judicial system, it was necessary to try the defendants for the overwhelming misconduct they demonstrated at the conspiracy trial. In not imposing fines or sentences, the district judge gave weight to the various factors that the defendants have urged in

favor of dismissal.

The contempt convictions are affirmed.

FAIRCHILD, Circuit Judge, concurring. I concur in the opinion, including affirmance of the finding on Kunstler specification VI. I do find it necessary, however, to recognize the difficulty in determining objectively that the conduct involved in this specification amounted to an actual obstruction of justice. It seems to me that in applying and preserving the federal rule that disrespect is not punishible contempt unless the conduct amounts to an actual obstruction of justice (cases cited, United States v. Seale, 461 F.2d 345, 369 (7th Cir. 1972)) we are willing to presume or infer the existence of obstruction where the conduct appears to us extremely inappropriate, indeed outrageous, and shocking.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

In the Matter of	:	
	:	
DAVID T. DELLINGER, ET AL.	:	72 CR 925
	:	

MEMORANDUM AND ORDER OF THE COURT

Presently before the Court is defendants' motion to dismiss or, in the alternative, for a judgment of acquittal, filed at the conclusion of the government's case. The motion has been fully briefed and argued. The motion is in four parts. The Court will deal separately with each of these parts.

I. DEFENDANTS' MOTION TO DISMISS

All defendants have moved to dismiss each and every one of the charges against them on the ground that "to continue further with these proceedings is so fundamentally unfair as to deny them due process of law, and so individually [sic]

discriminatory as to deny them the equal protection of the law, in violation of the Fifth Amendment to the Constitution of the United States." In support of their motion, defendants argue that the misconduct of the trial judge and the prosecutors toward the defendants, as found by the Court of Appeals, United States v. Dellinger, 472 F.2d 340, 388-89, n.84, 87 (7th Cir. 1972), was so egregious that a continuance of the prosecution would further undermine the integrity of the judicial system, and therefore would not be in the public interest. They urge that it is fundamentally unfair that the judge and prosecutors should receive no more than "ritualistic verbal spanking," see United States v. Antonelli Fireworks Co., 155 F.2d 631, 661 (2nd Cir. 1946) (Frank, J., dissenting), while defendants are subject to a criminal contempt prosecution.

Substantially the same argument was presented to and rejected by the Court of Appeals for the Seventh Circuit when it remanded the present contempt charges for trial; that court determined, as to those specifications found to be legally sufficient, "none of the charges merits dismissal 'in the interests of justice.'" In re Dellinger, 461 F.2d 389, 401 (7th Cir. 1972).[1/] Substantially the same argument was also presented to and rejected by this Court in its memorandum of opinion and order dated April 4, 1973 denying

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1/ In concluding his opinion, Judge Cummings stated:

> After careful consideration of the arguments of appellants and amici curiae, in our judgment, except as to those legally insufficient, none of the charges merits dismissal "in the interests of justice." In the words of Mr. Justice Cardozo, "Justice though due to the accused, is due to the accuser also." Therefore, the contempt conviction of appellants are reversed and remanded for further proceedings not inconsistent herewith. In re Dellinger, supra, 461 F.2d at 401 (footnotes omitted).

defendants' previous motion to dismiss. In re Dellinger, 357 F.Supp. 949, 954 (N. D. Ill. 1973).

This Court realizes that criminal contempt charges are prosecuted on behalf of the court and that their purpose is to vindicate the judicial process. This Court also appreciates that the court itself must ultimately determine whether such a prosecution is truly in the public interest. But defendants have presented no consideration which affords any sufficient ground for the outright dismissal of these contempt charges. The previous decisions of the Court of Appeals and of this Court that the public interest does not require the dismissal of this prosecution must stand.

In oral argument, defendants advanced two further contentions in support of their motion to dismiss, which apparently have not yet been considered either by the

Court of Appeals or this Court. First, they contend that the government is using the present prosecution to harass or punish the defendants for expressing views critical of the government, in derogation of their First Amendment rights of free expression. They rely on United States v. Falk, 479 F.2d 616 (7th Cir. 1973) and United States v. Steele, 461 F.2d 1148 (9th Cir. 1972), two recent cases which clearly stand for the proposition that a prosecution brought for the purpose of punishing or stifling an individual or a group for participation in protected First Amendment activities is unconstitutionally discriminatory.

Second, relying on principles enunciated long ago in Yick Wo v. Hopkins, 118 U.S. 356 (1886), they allege that counsel for the government engaged in conduct similar to that of the attorney de-

fendants Weinglass and Kunstler and, therefore, that the prosecution for contempt of only defense counsel constitutes an unconstitutionally discriminatory prosecution.

The authorities relied upon for these two arguments note that a criminal prosecution is presumed to be undertaken in good faith unless "a defendant alleges intentional purposeful discrimination and presents facts sufficient to raise a reasonable doubt about the prosecutor's purpose." United States v. Falk, supra at 620-21. See also Oyler v. Boles, 368 U. S. 448 (1962); Snowden v. Hughes, 321 U. S. 1 (1944); Moss v. Hornig, 314 F.2d 89 (2nd Cir. 1963); United States v. Maplewood Poultry Co., 320 F.Supp. 1395 (D.Me. 1970); cf. Yick Wo v. Hopkins, supra at 373-74. In the present case, defendants have presented no evidence to support their allegation that the prosecution of

the present charges amounts to a discriminatory and unconstitutional prosecution. Defendants have drawn the Court's attention to a number of statements and remarks of the government counsel presented in the transcript which they state demonstrates the alleged misconduct of those counsel. Even assuming arguendo that these statements and remarks constituted contumacious misconduct, this Court can find no satisfactory showing by defendants that the United States, on behalf of the court, has pursued the present prosecution for a discriminatory and unconstitutional purpose. Cf. Oyler v. Boles, supra; Snowden v. Hughes, supra; Moss v. Hornig, supra; United States v. Maplewood Poultry Co., supra.

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The defendants' motion to dismiss is DENIED.

II. DEFENDANT KUNSTLER'S MOTION TO DISMISS SPECIFICATION NO. 4.

Defendant Kunstler has moved the Court to dismiss Specification No. 4 of the charges against him for failure to charge an offense with sufficient specificity.

Specification No. 4 charges, first, that in the course of the direct examination of Mayor Richard J. Daley of Chicago, which runs from page 13,900 to page 14,094 of the official transcript, comprising almost 200 page, defendant Kunstler "asked no less than 83 questions which were objectionable, mostly leading and suggestive"; and, second, that defendant Kunstler directly violated the court's order by moving to have Mayor Daley declared a "hostile witness" in the presence of the jury.

Plainly, so much of Specification No. 4 as charges defendant Kunstler with know-

ingly asking improper questions, without specifying the questions alleged to be objectionable, lacks the specificity required of a criminal charge in order that the defendant may be sufficiently apprised of the accusation against him and adequately defend against it. See Fed. R. Crim. P. 42. As Judge Kaufman stated in the recent case of United States v. Meyer, 346 F.Supp. 973, 977 (D.D.C. 1972):

> While a judge's contempt certificate need not set forth in full the complained of trial incidents, it must refer to them with sufficient specificity to state their nature and the reason why they constituted contempt. Nor can any such lack be cured by the furnishing of particulars at a subsequent date by the United States Attorney....
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> * * *

Defendant Kunstler's motion to dismiss so much of Specification No. 4 as charges him with asking improper leading and suggestive questions is GRANTED, and that part of Specification No. 4 is

DISMISSED.

To the extent that the motion may be considered as addressed to that part of Specification No. 4 which charges defendant Kunstler with violating the court's order by moving to have Mayor Daley declared a "hostile witness" in the presence of the jury, the motion is DENIED.

III. DEFENDANT DAVIS' MOTION TO DISMISS SPECIFICATION NO. 4.

Defendant Davis has also moved for dismissal of Specification No. 4 of the charges against him for failure to charge an offense with sufficient specificity.

Specification No. 4 charges that during his cross-examination by the government attorney, which occurred over the course of three trial days and occupies some 433 pages of the official transcript (TR 17,820-18, 245), defendant Davis violated 43 court orders by not restricting his answers to the scope of the questions

posed. As with Specification No. 3 of the charges against defendant Kunstler, this specification must be dismissed for failure to charge an offense with the required specificity (see II, supra).

* * *

Defendant Davis' motion to dismiss Specification No. 4 of the charges against him is GRANTED, and Specification No. 4 is DISMISSED.

IV. DEFENDANTS' MOTION FOR JUDGMENT OF ACQUITTAL.

All defendants have moved, pursuant to Fed. R. Crim. P. 29(a), for a judgment of acquittal as to each and every charge against them. The mandate of Rule 29(a) is that the Court must order the entry of judgment of acquittal of any such charge "if the evidence is insufficient to sustain a conviction" of that charge. The Court is therefore called upon to determine with respect to each of the 52 contempt specifications presently before it

whether the evidence presented by the government, which consists solely of the official transcript of the trial, supplemented by defendants' cross-examination of the five court reporters, is sufficient to support a finding that the defendant named in that specification is guilty of the charge against him beyond a reasonable doubt. United States v. Seale, 461 F.2d 345, 372 (7th Cir. 1972).

In determining the sufficiency of the government's proof of the present specifications, the Court is governed by the legal standards relating to the acts of contempt charged as set forth in the two opinions of the Court of Appeals for the Seventh Circuit remanding the contempt proceedings against the present defendants and those against their former codefendant Seale, In re Dellinger, supra; United States v. Seale, supra, as those standards

have been further developed in two subsequent opinions in which that court tested the sufficiency of criminal contempt convictions. In re Chase, 468 F.2d 128 (7th Cir. 1972); Robson v. Oliver, 470 F.2d 10 (7th Cir. 1972). See also Robson v. Malone, 412 F.2d 848 (7th Cir. 1969).

A. Non-Lawyer Defendants. With respect to the non-lawyer defendants, the Court of Appeals has made clear in Seale that four elements are required to support a criminal contempt conviction under 18 U.S.C. §401(1).[3/ [sic]] See generally Seale, supra at 366-71.

3/ 18 U.S.C. §401 provides in pertinent part:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as--
>
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice.

(1) First, the conduct in question must be "in the court's presence or so proximate that it obstructs the administration of justice." Id. at 367.

Here, it is undisputed that the conduct charged took place in the court's presence.

(2) Second, the conduct at issue must constitute "misbehavior."

The Court of Appeals has defined "misbehavior" as "conduct inappropriate to the particular role of the actor, be he judge, juror, party, witness, counsel or spectator," the role of each having been "molded to insure that a judicial proceeding is orderly, dignified, and confined to a rational search for truth in the context of defined legal issues." Id. at 366-67. "There must be silence except as the orderly conduct of business calls for speech." Id. at 367 (quoting from

Robson v. Malone, supra at 850). "The standards of proper courtroom decorum are not altered and should not be applied differently because a trial may be characterized as political or because improprieties may be said to spring forth as if a 'natural human response.'" Idem. Finally, the Court of Appeals has made clear that "impropriety on the part of the trial judge cannot justify or excuse contemptuous conduct"; judicial error, judicial or prosecutorial misconduct, and judicial or prosecutorial provocation are to be considered only as extenuating and mitigating circumstances. Dellinger at 401; Seale at 361-63.

(3) Third, the alleged contemnor must have acted with the requisite intent.

The Court of Appeals has defined the minimum required intent as "a volitional act done by one who knows or should rea-

sonably be aware that his conduct is wrongful." Seale at 368. Thus, proof of a specific intent to obstruct justice is unnecessary to establish the requisite intent. Id. at 368-69. A defendant cannot be cited for contempt for borderline conduct, unless he has been first warned that such conduct will be regarded as contumacious. Id. at 366.[4/] And finally, the Court of Appeals has stated that conduct depicted in the trial transcript, without more, may itself sufficiently indicate intent to satisfy the government's burden of proof on this issue. Id. at 369.

4/ Under the intent standard which we will shortly enunciate, a defendant will be protected against the possible unfair surprise of being cited for contempt for conduct that could not be reasonably believed improper when committed. Accordingly, an absence of any warning that borderline conduct is regarded as contumacious could be fatal to a contempt citation therefor. Idem. (citation omitted).

(4) Fourth, the conduct in question must amount to an "actual and material" obstruction of the administration of justice. Idem.

The Court of Appeals has rejected a standard which would make punishable "any interruption" which "diverts the judge's attention from the orderly dispatch of the trial." Idem. It has stated, however, that "the seriousness of the misbehavior bears on what conduct may be found materially obstructive." Idem. Recognizing that "obstruction is an elusive concept which does not lend itself to general statements," idem., the Court of Appeals has nevertheless delineated certain types of conduct which do and do not rise to the level of obstruction:

(i) "Mere disrespect or affront to the judge's sense of dignity" is not alone sufficient; however, "at some point

disrespect and insult become actual and material obstruction." Id. at 369-70. "A showing of imminent prejudice to a fair and dispassionate proceeding is, therefore, necessary to support a contempt based upon mere disrespect or insult." Id. at 370. In determining whether the disrespectful remarks so imperil the proceeding, the reasonably to be expected reactions of those in the courtroom to the words or acts under scrutiny are relevant" and "the test of contumaciousness of words spoken during a court proceeding is their effect as contemporaneously understood by those who heard the words spoken in the courtroom. This includes the judge as well as other persons present." Idem. (quoting from Parmelee Transp. Co. v. Keeshin, 292 F.2d 806, 810 (7th Cir. 1961).

(ii) The manner in which insulting

remarks are spoken may raise otherwise non-obstructive remarks to the level of an obstruction. Idem. 5/ Furthermore, the delays caused by such remarks or other misbehavior may be sufficient to constitute a material obstruction, and thus "if a not insubstantial delay is entirely unnecessary and the misconduct serves, for instance, solely to vent the speaker's spleen, the requisite obstruction would be present." Idem. Differences in language patterns between different social, ethnic, political groups are, of course, relevant to the issue of intent. Idem.

(iii) "Failure to heed the directive of the Court to desist from arguing, to sit down, or to remain quiet may indeed

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5/ In the present case, since the government did not present testimony or evidence beyond the official transcript, the Court cannot determine whether insulting remarks disclosed by the record were shouted or accompanied by physical demonstration.

constitute an actual material obstruction to the administration of justice." Id. at 371. "A certain amount of leeway must be allowed. But where the directive is clear, the judge's insistence on obedience is not undercut by his further rejoinder, and the party directed understands what is being asked of him, he must obey." Idem.

(iv) "Where there is legally adequate representation and no pressing need for the litigant to interject himself into the proceedings," any such interjection may rise to the level of an obstruction. Dellinger, supra at 401.

(v) Finally, with respect to the refusals of defendants to stand when court is convened and recessed, the Court of Appeals has held that "such symbolic acts, when not coupled with further disturbance or disruption, sometimes might not rise to the level of an actual and material

obstruction of the judicial process"; when, however, a refusal to stand "is accompanied by some disturbance, disorder or interruption, an obstruction may exist." Idem. As the court has since stated in Chase, supra at 133:

> A participant's or spectator's defiance in the face of the court's insistence on his rising can supply the requisite obstruction because the judge properly "may require such rising." But even without any reaction by the judge, the failure to rise may amount to an actual and material obstruction if, for instance, as is quite likely, it distracts others in the courtroom or provokes a reaction on their part or is accompanied by a failure to become silent or focus attention on the business before the court.

Applying the foregoing standards to the contempt specifications against the non-lawyer defendants, the Court holds that, for reasons to be briefly stated, the evidence presented by the government is insufficient as a matter of law to sup-

port the following charges:

Dellinger II; Davis I, III; Hayden I; Hoffman I, III; Rubin I, III; Weiner I; Froines I (Refusals to Rise at the Beginning of a Court Session).

The record does not show that the court insisted on the defendants rising; or that such failures to rise distracted others in the courtroom, caused a delay, or provoked a reaction on the part of others in the courtroom. No material obstruction resulted.

Dellinger I.

The record does not show that the court gave any prior warning that the conduct charged would be regarded as contumacious. The record does not show that the conduct charged occasioned such a substantial delay of the proceedings as to constitute a material obstruction.

Dellinger XI.

The record does not show that the conduct charged caused any delay or other disruption of the proceedings. No material obstruction resulted.

Hayden II.

The record does not permit a finding beyond a reasonable doubt that the defendant knew or should reasonably have been aware that his conduct was wrongful.

Rubin II.

The record does not permit a finding beyond a reasonable doubt that this defendant made the only comment charged to him in the specification which could be regarded as contumacious.

Weiner II.

The record does not permit a finding beyond a reasonable doubt that the defendant made the remark charged to him in the specification in a loud enough voice to be heard by the court or jury.

The record does not show that the remark occasioned a material obstruction or that the defendant acted with the requisite intent.

Weiner III.

The record does not permit a finding beyond a reasonable doubt that the defendant engaged in the conduct charged. The record does not show that the conduct charged to the defendant occasioned any delay or other disruption of the proceedings so as to constitute a material obstruction.

Froines II.

The record does not show that the conduct charged to the defendant occasioned any delay or other disruption of the proceedings so as to constitute a material obstruction.

Froines III.

The record does not show that the

conduct charged to the defendant occassioned any delay or other disruption of the proceedings so as to constitute a material obstruction.

Applying the standards delineated above to the remaining contempt specifications against the non-lawyer defendants, the Court cannot say that the evidence presented by the government is insufficient as a matter of law to support the following charges:

Dellinger III, IV, V, VI, VII, VIII, IX and X;

Davis II and V;

Hayden III;

Hoffman II, IV, V, VI and VII;

Rubin IV, V and VI.

* * *

Defendants' motion for judgment of acquittal is GRANTED, and judgment will be entered acquitting the defendants of the charges against them in the following

specifications: Dellinger I, II and XI; Davis I and III; Hayden I and II; Hoffman I and III; Rubin I, II and III; Weiner I, II and III; Froines I, II and III. With respect to all other specifications, defendants' motion for judgment of acquittal is DENIED.

B. Lawyer Defendants. With respect to each of the contempt specifications against the lawyer defendants, the issue before the Court is whether the evidence presented by the government--consisting, it bears repeating, solely of the official transcript--establishes beyond a reasonable doubt that the conduct charged rose to the level of intentional misbehavior in the presence of the court which amounted to an actual and material obstruction of the administration of justice, as the Court of Appeals has defined the essential elements of the crime of

contempt in Seale. Dellinger, supra at 397; Oliver, supra at 12. In addition

> where, as here, the conduct complained of is that of an attorney engaged in the representation of a litigant, the search for these essential elements of the crime of contempt must be made with full appreciation of the contentious role of trial counsel, and his duty of zealous representation of his client's interests. Idem.

As to attorney contempts, in both Dellinger and Oliver, the court also quoted with approval the language of the Supreme Court in In re McConnell, 370 U.S. 230, 236 (1961):

> [W]hile we appreciate the necessity for a judge to have the power to protect himself from actual obstruction in the courtroom...it is also essential to the fair administration of justice that lawyers be able to make honest good-faith efforts to present their clients' cases. An independent judiciary and a vigorous, independent bar are both indispensable parts of our system of justice. To preserve the kind of trials that our system envisages, Congress has limited the summary contempt power vested in courts to the least possible power adequate to prevent actual obstruction of justice. Dellin-

ger at 397; Oliver at 13.

With respect to the requisite intent, the Court of Appeals has further stated that attorneys may be "...persistent, vociferous, contentious, and imposing, even to the point of appearing obnoxious, when acting in their client's behalf," Dellinger at 400, and that "...an attorney possesses the requisite intent only if he knows or reasonably should be aware in view of all the circumstances, especially in the heat of controversy, that he is exceeding the outermost limits of his proper role and hindering rather than facilitating the search for truth." Idem.

Thus, in determining whether an attorney is guilty of criminal contempt, the only issue is, as stated by the Court of Appeals in Oliver, "...whether it can 'clearly be shown' from the record that... [the attorney's] conduct rose to the level

of contemptuous 'misbehavior' which 'obstructed' the judge in performance of judicial duty." Oliver at 12. See also McConnell at 234. In sum, attorneys must be given "great latitude" in the area of vigorous advocacy, and doubts in delineating the line between vigorous advocacy and obstruction are to be resolved in favor of advocacy. Dellinger at 398; Oliver at 13. As the Supreme Court stated in McConnell,

> The arguments of a lawyer in presenting his client's case strenuously and persistently cannot amount to a contempt of court so long as the lawyer does not in some way create an obstruction which blocks the judge in the performance of his judicial duty. 370 U.S. at 236.

In Dellinger and Oliver, the Court of Appeals has set forth certain types of conduct by attorneys which do and do not rise to the level of contemptuous misbehavior constituting an actual and material

obstruction. See generally Dellinger at 397-401; Oliver at 13-14:

(1) Attorneys may not persist in continuing argument after express orders by the trial judge to cease. Dellinger at 398. Good faith is not an absolute defense to a contempt citation for persistent argument, even thpugh the attorney has not been given a reasonable opportunity to be heard. Idem. On the other hand, "...without an actual obstruction, there can be no contempt." Idem. And "...where the judge is arbitrary or affords counsel inadequate opportunity to argue his position, counsel must be given substantial leeway in pressing his contention...." Id. at 399.

(2) When, despite a court directive to cease argument, the trial judge adds a rejoinder or a statement which calls for a response by the attorney," an in-

vited, additional response cannot subsequently be viewed as a contemptuous violation of the order." Idem.

(3) An attorney is not required to refrain from reply when the judge has charged him with professional misconduct; he "...may insist upon being heard in his own defense so long as his response is respectful." But, while the attorney may respond to such an attack, "[e]ven if the judge's accusation be unfounded, or ill-tempered, it does not protect counter-misbehavior...." Idem.

(4) At attorney has no affirmative obligation to restrain his client from disruptive conduct; he commits contempt, however, if he encourages disruptive behavior by a client or "...fans the flames of existing frictions...." Id. at 399-400. Unless the attorney's conduct is the occasion for disruptive conduct by others

in the courtroom, the attorney cannot be held responsible for that conduct. Oliver at 13.

(5) "[M]ere disrespect or insult cannot be punished where it does not involve an actual and material obstruction." Dellinger at 400. "This is particularly true with respect to attorneys when the 'heat of courtroom debate' may prompt statements which are ill-considered and might later be regretted." Idem. When, however, the attorney's remarks create an "imminent prejudice to a fair and dispassionate proceeding," the line "beyond which disrespect becomes obstruction" is crossed. Idem. A material obstruction may result if unnecessary and significant delay is caused by insulting remarks which serve, for instance, only "...to vent the speaker's spleen...." Idem. The manner in which the remark was made may also be

significant.[6] Idem.

(6) Finally, it must be reiterated that, as the Court of Appeals made clear in both Seale and Dellinger, impropriety on the part of the trial judge cannot justify or excuse contemptuous conduct. However, judicial (or prosecutorial) provocation is to be considered...in extenuation of the offense and mitigation of any penalty to be imposed." Dellinger at 401; Seale at 361-64.

Bearing in mind the "'extreme liberality' afforded trial counsel in their representation of clients, and resolving any doubts in favor of vigorous advocacy," Oliver at 13, the Court holds, for the reasons to be stated, that the evidence presented by the government is insufficient as a matter of law to support the following charges against the defendants

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6/ But see Note 5, supra.

Weinglass and Kunstler:

Weinglass I, II, IV and V.

The record does not "clearly show" that the conduct charged to defendant Weinglass in these specifications was conduct "so inappropriate to...[his] role as trial counsel as to exceed the 'outermost bounds' of vigorous advocacy." Oliver at 13, or that such conduct "rose to the level of contemptuous 'misbehavior' which 'obstructed' the judge in the performance of judicial duty." Oliver at 12. See also McConnell at 234. Furthermore,

(i) with respect to I, the record does not show that, as charged in the specification, defendant Weinglass accused the judge of dishonesty or otherwise insulted the court, and the remarks of this defendant set forth in the second part of the specification appear to have been in response to the court's previous statement

that defendant Weinglass needed a defense (TR 16,665);

(ii) with respect to II and V, the record does not permit a finding beyond a reasonable doubt that defendant Weinglass, in attempting to protect his clients' rights, knew or should reasonably have been aware that his persistence exceeded the "outermost limits" of his proper role as counsel;

(iii) with respect to the last portion of the remarks charged to defendant Weinglass in II, they were in reply to statements by the trial judge which reasonably called for a response.

Kunstler II.

The record does not "clearly show" that the conduct charged to defendant Kunstler in this specification caused any substantial delay or other disruption of the proceedings. No material obstruction

resulted.

Kunstler III.

The record does not "clearly show" that the conduct charged to defendant Kunstler in this specification caused any substantial delay or other disruption in the proceedings so as to constitute a material obstruction.[7/]

Kunstler IX.

The record does not "clearly show" that the remarks charged to defendant Kunstler in this specification exceeded the "outermost limits" of vigorous advocacy or rose to the level of a material obstruction. Further, many of the remarks charged to this defendant were in reply to statements by the trial judge which reasonably called for a response.

7/ The Court notes that the trial judge apparently felt that a cautionary instruction was sufficient to remedy any impact of the defendant's remarks on the jury (TR 12, 395).

Applying the same principles to the remaining contempt specifications against the defendants Weinglass and Kunstler, the Court cannot say that the evidence presented by the government is insufficient as a matter of law to support the following charges:

Weinglass III;

Kunstler I, that part of IV not previously dismissed, V, VI, VII and VIII.

* * *

Defendants' motion for judgment of acquittal of the charges against defendants Weinglass and Kunstler is GRANTED, and judgment will be entered acquitting these defendants of the charges against them in the following specifications: Weinglass I, II, IV and V; Kunstler II, III and IX. With respect to all other specifications against defendants Weinglass and Kunstler, defendants' motion

for judgment of acquittal is DENIED.

IV.

IT IS SO ORDERED.

Dated at Chicago, Illinois, this 6th day of November, 1973.

United States District Judge
Sitting by Designation

WILLIAM M. KUNSTLER-SPECIFICATION VI

On February 2, after the Court ruled that Mr. Kunstler would have to abide by his representation the previous Friday, and therefore would not be able to call the Reverend Ralph Abernathy to the stand, Mr. Kunstler made the following speech at the conclusion of his argument:

"The Court: ... There have been several witnesses called here during this trial-I need not mention their names-whose testimony the Court ruled could not even be presented to the jury: singers, performers, and former office holders. I think in the light of the representations made by you unequivocally, sir, with no reference to Dr. Abernathy, I will deny your motion that we hold-

Mr. Kunstler: I want to comment on this, your Honor, because I think what you have just said is about the most outrageous statement I have ever heard from a bench, and I am going to say my piece right now, and you can hold me in contempt right now if you wish to.

You have violated every principle of fair play when you excluded Ramsey Clark from the witness stand. The New York Times, among others,

has called it the ultimate outrage in American justice.
Voices: Right on.
Mr. Kunstler: I am outraged to be in this court before you. Now because I made a statement on Friday that I had only a cameraman, and I discovered on Saturday that Ralph Abernathy, who is the chairman of the Mobilization, is in town, and can be here, and because you took a whole day from us on Thursday by listening to this ridiculous argument about whether Ramsey Clark could take that stand in front of the jury, I am trembling because I am so outraged. I haven't been able to get this out before, and I am saying it now, and then I want you to put me in jail if you want to. You can do anything you want with me, if you want to; because I feel disgraced to be here, to say to us on the technicality of my representation that we can't put Ralph Abernathy on the stand. He is the co-chairman of the MOBE. He has relevant testimony. I know that doesn't mean much in this Court when the Attorney General of the United States walked out of here with his lips so tight he could hardly breathe, and if you could see the expression on his face, you would know, and his wife informed me he never felt such anger at the United States Government as at not being able to testify on that stand.
Voices: Right on.
Mr. Kunstler: You can't tell me that Ralph Abernathy cannot take the stand today because of the technicality of

whether I made a representation. That representation was made in perfect good faith with your Honor. I did not know that Reverend Abernathy was back in the country. We have been trying to get him for a week and a half to be the last witness for the defense in this case. And now to tell me that we are going ahead, the Government is ready, after you took Thursday from us to have this argument over whether a man could be presented to a jury, I told your Honor then, and I am telling you now, no American court has ever done what your Honor did-

Voices: Right on.

Mr. Kunstler: -basing it on a case which was inapplicable to the situation. That was done for one purpose only, and the New York Times said it more beautifully than I could say it, and they said, 'It was done to make inadmissible anything that would "interfere" with the Justice Department's intent to prove a conspiracy to incite a riot during the Democratic National Convention.'

Voices: Right on.

Mr. Kunstler: That was the reason behind your Honor's ruling, nothing short of that.

I have sat here for four and a half months and watched the objections denied and sustained by your Honor, and I know that that is not a fair trial.

I know it in my heart. If I have to lose my license to practice law and if I have to go to jail, I can't think of a better cause to go to jail for and to

lose my license for -
A Voice: Right on.
Mr. Kunstler: - than to tell your Honor that you are doing a disservice to the law in saying that we can't have Ralph Abernathy on the stand. You are saying truth will not out because of the technicality of a lawyer's representation. If that is what their liberty depends upon, your Honor saying I represented to you that I had a cameraman, and that was our only witness, a cameraman, whom we can't get, incidentally, then I think there is nothing really more for me to say.
The Court: There is not much more you could say, Mr. Kunstler.
Mr. Kunstler: I am going to turn back to my seat with the realization that everything I have learned throughout my life has come to naught, that there is no meaning in this court, and there is no law in this court-
Voices: Right on.
Mr. Kunstler: -and these men are going to jail by virtue of a legal lynching-
Voices: Right on.
Mr. Kunstler: -and that your Honor is wholly responsible for that, and if this is what your career is going to end on, if this is what your pride is going to be built on, I can only say to your Honor, 'Good luck to you.'
(There were shouts of 'Right On', and there was applause in the courtroom.)" Official Transcript, Pages 19,108-112.

WILLIAM M. KUNSTLER - SPECIFICATION VII AND OMITTED TRANSCRIPT PAGES.

PART I

After the Court ruled, on February 2, that the Reverend Abernathy would not be permitted to take the stand, the Court ordered that Mr. Kunstler and the other attorneys and defendants not mention the name of the Reverend Abernathy in front of the jury. Mr. Kunstler not only defiantly indicated that he fully intended to violate that order, but in the middle of the direct testimony of the witness Lynskey, Mr. Kunstler actually brought the Reverend Abernathy into the courtroom and made a statement to the jury and physically embraced the Reverend Abernathy in front of the jury. This flagrant violation of the Court's order is reported as follows:

> "Mr. Schultz: Your Honor, may the defendants and their counsel then not make any reference in front of

the jury that they wanted Doctor Abernathy to testify?
Mr. Kunstler: No, no.
The Court: I order you not to make such a statement.
Mr. Kunstler: We are not going to abide by any such comment as that.

Doctor Ralph Abernathy is going to come into this courtroom, and I am going to repeat my motion before that jury.
The Court: I order you not to.
Mr. Kunstler: Then you will have to send me to jail, I am sorry.
Mr. Schultz: Your Honor, it is our position we are ready to go ahead now. If Doctor Abernathy were here, if he were here, it would be our position that they could put him on, but he is not here. We are ready to go ahead. We would like to proceed with the case.
The Court: Bring in the jury, Mr. Marshal.
Mr. Kunstler: We have a right to state our objection to resting before the jury.
The Court: Don't do it.
Mr. Kunstler: I am going to have to put my liberty in your hands on that score.
Mr. Schultz: Mr. Kunstler is simply inviting it.
Mr. Kunstler: Oh, of course, I am inviting it because what your Honor is doing is a disgrace in this court.
The Court: He did more than invite.
Mr. Kunstler: He will be here in five minutes. Your Honor, what is an honest man to do when your Honor has done

what he has done? What am I to do? Am I to stand here and say, 'Yes, yes, yes'?
The Court: I will ask you to sit down. I have heard enough from you along this line this morning, sir. I have never as a lawyer or a judge heard such remarks in a courtroom made by a lawyer.
Mr. Kunstler: Your Honor, no one has heard of such conduct as is going on in this courtroom from the bench. The New York Times is not alone in that respect, and this is the ultimate outrage-and I didn't say-the editorial writers of the New York Times said that.
Mr. Schultz: May we proceed, your Honor?
The Court: Yes, I have ordered the jury brought in." Official Transcript, Pages 19,140-42.

* * *

The following portion of the trial transcript before Judge Hoffman was omitted in Mr. Kunstler's Specification VII as reported by Judge Hoffman and by Judge Gignoux:

"(The following proceedings were had in open court, in the presence and hearing of the jury:)

THE COURT: Good morning, ladies and gentlemen of the jury.

THE JURORS: Good morning, your Honor.

THE COURT: I must inform you that I have called on the defendants to produce whatever witness they had, and they had none ready to proceed, and they did not indicate that they would rest. Hence, I entered an order indicating that the defendants were not ready to proceed as they indicated on Friday they would be, and I let the record show in your presence that the defendants have rested. The work 'rested' in law means they have no further evidence to present.

MR. KUNSTLER: We object to that, your Honor. Dr. Ralph Abernathy is on his way from the airport to this courtroom. We informed your Honor and requested a few moments. He has just arrived back in the country. We want the jury to understand we do not rest. We are prepared to go ahead. We ask merely a few minutes' recess to bring Dr. Abernathy to the stand.

MR. SCHULTZ: The Government's position is if he were here, we wouldn't object to their putting him on, even though they said they had no more witnesses. We want to proceed with the trial. They don't know when he is going to be here. They have said he was going to be here for the last hour.

THE COURT: I have ruled.

MR. SCHULTZ: Yes, sir.

THE COURT: I have ruled.

MR. DAVIS: He called from the airport.

MR. KUNSTLER: The record should indicate that Dr. Abernathy called from the airport.

THE COURT: The record doesn't indicate any such thing.

MR. KUNSTLER: Now, it does, your Honor.

MR. FORAN: Your Honor, may we proceed with the rebuttal case of the Government?

THE COURT: Yes, you may.

(And thereupon the Government, further to maintain the issues on its behalf, introduced the following evidence in rebuttal, to wit:)

ROBERT J. LYNSKEY,
a witness called by the Government in rebuttal, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FORAN:

Q. Will you state your name, please?

A. Robert J. Lynskey, L-y-n-s-k-e-y.

Q. What is your occupation?

A. I am a police officer for the City of Chicago.

Q. What is your rank, sir?

A. Deputy Chief of Patrol.

Q. How long have you been with the

Police Department?

A. Almost twenty-four years.

Q. What are your duties as Deputy Chief of Patrol?

A. I am in-charge of three district stations within the Sixth Police Area -- the East Chicago, the Town Hall and the Foster Avenue Districts.

Q. During the week of and the week prior to the Democratic National Convention in the latter part of August, 1968, what were your duties?

A. I was Deputy Chief of Patrol within the Sixth Area, and in addition, I was in charge of a detail of police personnel assigned to the Lincoln Park area.

Q. Do you know a person by the name of Abbie Hoffman?

A. Yes, I do.

Q. Do you see him here in the courtroom?

A. He is at the witness table. He has a yellow sport shirt on. He has his finger in the air at the moment. There are thin lines in the sport shirt.

MR. FORAN: May the record show that the witness identified the defendant Hoffman?

THE COURT: The record may so indicate.

BY MR. FORAN:

Q. Directing your attention to Saturday, August the 24th, did you have a conversation with the defendant Hoffman in the Cultural Arts Center in Lincoln Park in which you told him, 'Kick me in the shins --'

MR. KUNSTLER: Your Honor, you talk about leading questions, I have never heard one that started out that way.

MR. FORAN: This is a specific rebuttal question calling attention to a specific sentence that the witness Hoffman testified Deputy Chief Lynskey said to him. I must call his attention to that specific statement because it is a rebuttal question.

MR. KUNSTLER: That is not proper on rebuttal or even under direct, your Honor. He is to ask him what conversation he heard. He is telling the witness exactly what the conversation is.

THE COURT: I do not share your view that it is not proper on rebuttal. I don't know how it can ever be determined whether or not the statement was made unless you put it up to this witness.

MR. KUNSTLER: Ask him what the conversation was.

THE COURT: I overrule your objection.

MR. FORAN: Would you read the question to the witness, please? May the question be read to the witness, please?

THE COURT: Yes, please read the question to the witness.

A VOICE: Now, he's changing the rules.

(Question read.)

MR. FORAN: May I restate the question, your Honor? I was cut off before I finished.

THE COURT: You may. Yes, you may.

BY MR. FORAN:

Q. Directing your attention to Saturday, August 24th, 1968, did you have a conversation with the defendant Hoffman in the Cultural Arts Center in which you said to him, 'Kick me in the shins, and I'll arrest you'?

A. No, I did not.

Q. Have you ever had such a conversation with him?

A. No, I did not.

Q. Have you ever had a conversation with the defendant Hoffman in the Cultural Arts Center in Lincoln Park?

A. No, I have not.

Q. Directing your attention to approximately midnight on Sunday, August 25th, 1968, where were you, sir?

A. I was on Cannon Drive in Lincoln Park, the east end of the park.

Q. And what was occurring?

A. We were preparing lines of police officers to walk through the park and clear the people out of the park.

Q. Were any announcements being made by the police?

A. Yes, for some time previous--

MR. KUNSTLER: Your Honor, I think that is a leading question. He asked him what the police did do. He is telling him the answer. 'Were there any announcements by the police?'

THE COURT: You may revise your question.

MR. FORAN: I will rephrase it, your Honor.

BY MR. FORAN:

Q. What, if anything, were the police doing at that time at midnight?

A. The police were lining up in two ranks while one police vehicle was being utilized to make an announcemnt that the park was closed, and that those people still in the park were in violation of the law.

Q. How many times was that announcement given?

A. That announcement had been given probably a dozen or more times. I heard it three or four times myself.

MR. KUNSTLER: Your Honor, I object to the answer. 'Probably' shows no knowledge on the part of this witness, who heard it three or four times. 'Probably a dozen or more times,' is what I am objecting to.

THE COURT: Read the question and the answer to me, please.

(Question and answer read.)

BY MR. FORAN:

Q. Just what did you hear?

THE COURT: I would say that the witness' answer should be limited to the number of times he heard it.

BY MR. FORAN:

Q. How many times did you hear the announcement?

A. To the best of my knowledge, I heard it three or four times.

Q. Now, did there come a time that the police line moved out from Cannon Drive?

A. Yes, approximately 20 minutes after 12:00, we moved out in a southwesterly direction through the park.

Q. And where were you with respect to the police line at that time?

A. I was in front of the police line, walking backwards most of the time, observing the police line, and trying

to keep it in an orderly fashion.

Q. Were any other officers in similar positions to you?

A. Commander Braasch was also out in the front of the two police lines.

Q. And did you have anything with you to amplify your voice?

A. I was carrying a small amplifier or bull horn as we refer to it, to amplify in two directions.

Q. Could you describe the movement of the police to the southwest?

A. The police lines moved out from the west curb of Cannon Drive, moving slowly and stopping at what would be natural barriers, such as sidewalks, gravel paths, bicycle paths, and so forth, to realign so that we could keep a fairly straight line of police going through the park. We stopped about three times within the park proper, and then finally we stopped on the east curb of Stockton Drive.

Q. And what, if anything, occurred when the police line reached Stockton Drive?

A. There were quite a few people who had just left the park in the parking area of Stockton Drive, some of whom were up on top of vehicles and there was much throwing of missiles at the police officers.

Q. What happened then, sir?

A. We then moved forward through the parking area to the east curb of Clark Street where we again halted the police line.

Q. On that Sunday night, was any tear gas used in the park?

A. No, sir.

Q. How long did it take the police line to move from its starting point at 12:20 on Cannon Drive to the curb of Clark Street?

A. Probably 15 minutes. I think we arrived there at 12:35, 12:40.

Q. Now, directing your attention to approximately midnight on Monday, August 26, 1968, where were you?

A. I was again in Cannon Drive at the east end of Lincoln Park.

Q. And would you describe what was going on at that time?

A. Those people who were still in the park had erected a barricade with picnic tables, and benches, and trash baskets, and any other large objects that would be located within the park, and were behind the barricade. Periodically, some of them would dart out and hurl rocks, bottles, tiles, at the police officers who were forming a line." Official Transcript, Pages 19142-19154. (End of omitted trial transcript.)

* * *

PART II

MR. KUNSTLER: Your Honor, if I can interrupt, Dr. Ralph Abernathy has just arrived.
THE COURT: Let him sit down.
MR. KUNSTLER: I would like to put him on the stand for the defense.
THE COURT: Let him sit down.
MR. KUNSTLER: I would like to move to reconsider to put him on the stand as a witness for the defense. It is now just 11:37.
THE COURT: Let him sit down, please. You may continue with your examination, Mr. Foran.
MR. KUNSTLER: Does your Honor deny my motion?
THE COURT: I do, sir. You may continue with your examination.
MR. KUNSTLER: Your Honor, it is only 16 minutes after the Government said they would have no objection to have Dr. Abernathy testify. He was flown here from Atlanta to be a witness for the defense.
THE COURT: I do not interpret what the Government says to mean that, and the Government is not running this courtroom.
MR. KUNSTLER: Your Honor-
THE COURT: Will you continue?
MR. KUNSTLER: Is the truth to be deprived from this jury because of 16 minutes?
MR. FORAN: Your Honor, the Government is in the middle of the examination of a witness.
MR. KUNSTLER: We have tried to get the few minutes delay so we could bring Dr. Abernathy here.
THE COURT: I ask you to sit down, sir.
BY MR. FORAN:

Q. What was the noise level at that time?
MR. KUNSTLER: Your Honor, before this goes on, would your Honor permit an application for Dr. Abernathy to testify after this witness has testified?
THE COURT: I ask you to sit down.
MR. KUNSTLER: Otherwise we are going to excuse him.
THE COURT: Mr. Marshal, have that lawyer sit down.
MR. KUNSTLER: Can you give me an answer to my question? We want to excuse Dr. Abernathy.
THE COURT: If you will please sit down-
MR. KUNSTLER: I am going to be forced in a minute so I have no alternative.
THE COURT: Yes.
MR. KUNSTLER: Can I get an answer sitting down to my question?
MR. FORAN: Your Honor, the interruption in the midst of the questioning of a witness in the presence of the jury is unheard of, your Honor, I wish he would-
MR. FROINES: So is not putting on a witness.
A VOICE: -going to walk out of the courtroom because we can't put a man on the stand-
A VOICE: Can't put on our witness-
THE COURT: Did you hear what I asked you to do, sir?
MR. KUNSTLER: I am down.
THE COURT: Please continue with your examination.
MR. KUNSTLER: I am going to ask Dr. Abernathy to leave, your Honor. It is obvious that he is not going to testify.
MR. FORAN: Your Honor, the proper

procedure is to discuss such matters outside the presence of the jury, not in the midst of the questioning of the witness.
THE COURT: I ordered him not to discuss that witness in the presence of the jury before the jury came in. He violated my order.
MR. FORAN: Your Honor, may I wait? May I await Mr. Kunstler returning to counsel table?
MR. KUNSTLER: I will be back, your Honor.
THE COURT: Yes, you may wait. Let the record show the hug of counsel for the defendant.
MR. FORAN: Your Honor, the discussion of whether or not the witness should be called as a witness would properly await the finishing of the examination of this witness and the demonstration--
THE COURT: Go ahead.
MR. KUNSTLER: Then I told him to leave, your Honor. He-
THE COURT: All right. You have told him to leave.
MR. KUNSTLER: I can hold him if there is nothing--we want him to testify.
THE COURT: You told him to leave, and I again direct you to sit down. We have had enough this morning.
MR. KUNSTLER: May I send one of the defendants out just to ask him to stay, so perhaps-
THE COURT: No, you may not send one of the defendants out. You may not send-
MR. KUNSTLER: May I go and tell him?
THE COURT: I ask you to sit down.
MR. KUNSTLER: Your Honor, just to tell him so that, if the Government is going to permit him to testify-
THE COURT: I have had enough of your insults this morning.

MR. KUNSTLER: Your Honor, this--I am not being insulting.
THE COURT: You were this morning.
MR. KUNSTLER: I was not insulting. I told you the truth this morning. I told you what the New York Times said-
THE COURT: All right.
MR. KUNSTLER: -about the refusal to put a witness on the stand.
THE COURT: You sit down, sir, or we will arrange to have you put down." Official Transcript, Pages 19154-159.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of :

DAVID T. DELLINGER :
RENNARD C. DAVIS,
JOHN R. FROINES, :
THOMAS C. HAYDEN, Cr. 72-925
ABBOTT H. HOFFMAN, :
JERRY C. RUBIN,
LEE WEINER, :
LEONARD I. WEINGLASS,
and WILLIAM M. KUNSTLER. :

MOTION FOR DISCLOSURE OF ELECTRONIC OR OTHER SURVEILLANCE, FOR A FULL INVESTIGATION OF SURVEILLANCE, AND FOR FURTHER RELIEF.

Defendants, by their undersigned attorneys, respectfully move this Court pursuant to Federal Rules of Criminal Procedure 16 and 41, the Fourth, Fifth and Sixth Amendments to the Constitution of the United States, and Title 18, U.S.C., Sections 2510-20 and 3504, for an order compelling the United States to disclose to defendants:

1. Any and all actual voice records, tapes, mechanical or electrical recordings, logs, records, memoranda, letters and airtels of any electronic or other surveillance,

a) of any wire or oral communications to which any defendant*/ was a party;

b) of any wire or oral communications at any place in which any defendant had an "interest" at the time of the surveillance; "interest" meaning any property right or any other nexus of use and reasonable expectation of privacy;**/

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*/ As used in this motion, the term "defendant" includes David T. Dellinger, Rennard C. Davis, Abbott H. Hoffman, John R. Froines, Thomas E. Hayden, Jerry C. Rubin, Lee Weiner, Leonard I. Weinglass, and William M. Kunstler.

**/ In order to aid the government in searching for the materials sought by this motion, defendants have annexed as Exhibit A a list of telephone numbers and addresses wherein they have had an expectation of privacy in communications. Since many of the defendants were active in political organizations there is also included a list of such organizations where one or more of the defendants worked and had an expectation of privacy. The list

(fn. cont. next page)

c) of any wire or oral communications at any place put under surveillance for the purpose, in whole or in part, of gathering evidence or leads against any defendant, i.e., directed against any defendant;

d) of any wire or oral communications at any place where any defendant was at the time of the surveillance;

e) of any wire or oral communications in which a defendant is named or otherwise referred to.

2. Any and all actual voice records, tapes, mechanical or electrical recordings, logs, records, memoranda, letters and airtels of any electronic or other surveillance,

a) of any wire or oral communications, one of the parties to which was any

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(fn. cont. from preceding page)
above referred to are <u>not</u> to be considered exhaustive of such places.

attorney associated with the defense, a defense consultant, or legal or clerical assistant associated with any such attorney or legal consultant;

b) of any wire or oral communication at any place in which any attorney associated with the defense, a defense consultant, or legal or clerical assistant associated with any such attorney or legal consultant had an "interest" at the time of the surveillance; "interest" meaning any property right or any other nexus of use and reasonable expectation of privacy;

c) of any wire or oral communications at any place put under surveillance for the purpose, in whole or in part, of gathering evidence or leads against any attorney associated with the defense, a defense consultant, or legal or clerical assistant associated with any such attorney

or legal consultant;

d) of any wire or oral communications at any place where any attorney associated with the defense, a defense consultant, or legal or clerical assistant associated with any such attorney or legal consultant was at the time of the surveillance;

e) of any wire or oral communication in which there is named, or reference is made to, any attorney associated with the defense, defense consultant, or legal or clerical assistant associated with any such attorney or defense consultant. */

3. Any and all actual voice records, tapes, mechanical or electrical recordings,

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*/ Attached hereto as Exhibit B is a list of all persons falling within the category of "attorney associated with the defense, defense consultant, or legal or clerical assistant associated with any such attorney or defense consultant." As to each such person there are included names and telephone numbers where the persons aforesaid had an expectation of privacy. Defendants reserve the right to supplement the data set forth in Exhibits A and B.

logs, memoranda, records, letters, and airtels of any electronic or other surveillance of wire or oral communications such as are described in Paragraphs 1 and 2 above, which surveillance revealed the existence of such conversation, even if not the contents.

4. The demands for disclosure in Paragraphs 1, 2, and 3 above embrace electronic or other surveillance undertaken not only by the United States, its agents and employees, but also such surveillance as may have been made by agents and employees of any other governmental agencies, state or local, or private parties or corporations, if solicited by the government to engage in such electronic surveillance or if electronic surveillance was done in cooperation or in conjunction with the federal government or if the federal government has knowledge or is in a position to ac-

quire knowlege of any electronic surveillance by the aforesaid governments, agencies, private parties or corporations.

5. The demands for disclosure under Paragraphs 1, 2 and 3 above embrace any wire or oral communications to which a party to that conversation allegedly consented.

6. For any electronic or other surveillance as described in Paragraphs 1 through 4 above for which there are no voice records, tapes, mechanical or electrical recordings, logs, memoranda, records, letters, or airtels, demand is made that the names and business addresses of the persons who conducted said surveillance or who have knowledge of said surveillance be disclosed.

7. Demand is also made for any and all applications, affidavits, memoranda, and other papers submitted in support of

applications for executive, administrative or judicial approval of such surveillance as described above, and all administrative, judicial and executive orders, opinions and decisions responsive thereto or relating to the surveillance described above.

8. The demands made above seek not only disclosure of surveillance presently known to the government but also that which in the exercise of due diligence may become known thereto.

9. Defendants further move this Court for entry of an order directing the government to conduct a search of the files of every federal agency which conducts electronic surveillance in order to determine whether there has been electronic surveillance as described above, and directing the government to produce the logs of any unidentified voices at such

places as any of the defendants or their attorneys had an expectation of privacy.

10. Defendants further request entry of an order requiring the government to inquire with respect to the electronic surveillance described above of all state and local jurisdictions where defendants or their counsel, defense consultants, or legal or clerical assistants associated with any such attorney or defense consultant may have been overheard, and to direct a search of the files of every agency within those jurisdictions which conducts electronic surveillance.

11. Defendants further request entry of an order requiring that the government's initial response to this motion be sworn by the person or persons in charge of conducting the search for the surveillance described above, setting forth in detail the nature of the investigation conducted and specifying the particular fed-

eral, state and local agencies inquired of.

12. Defendants further respectfully move this Court for an order of continuing disclosure of the items sought above, under Federal Rules of Criminal Procedure 16(g) and any applicable local rule or rules.

13. Defendants further request an evidentiary hearing prior to trial, at which the government shall present for cross-examination the person or persons whose affidavits are presented under Paragraph 11 above, and any other government officials whose testimony may be necessary, to determine:

a) whether the government has fully complied with the demands made above;

b) the legality of any such electronic or other surveillance;

c) the extent to which the govern-

ment obtained any leads from any such surveillance which was employed; and

d) the extent to which any such surveillance interfered with defendants' rights of counsel.

14. The grounds for this motion, more particularly set forth in the memorandum of law and attachments thereto, are that only through effective pre-trial adversary inquiry can defendants be protected in their right to be free of the effects of unlawful electronic or other surveillance.

15. Defendants further move that this Court issue a protective order directing that the nature and contents of the aforesaid requested materials may not be disclosed by the government to any person, natural or artificial, public or private, whatsoever, except to defendants and their counsel.*/

*/ Signature and Exhibits omitted.

SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of

DAVID T. DELLINGER,
RENNARD C. DAVIS,
JOHN C. FROINES,
THOMAS C. HAYDEN,
ABBOTT H. HOFFMAN,
JERRY C. RUBIN,
LEE WEINER,
LEONARD I. WEINGLASS, and
WILLIAM M. KUNSTLER

Cr. 72-925

SCHEDULE OF REPRESENTATION OF DEFENDANTS IN THE CONTEMPT CASE HEREIN BY ATTORNEYS AND LEGAL WORKERS, SHOWING PERSONS REPRESENTED AND PERIOD OF THEIR REPRESENTATION.

A. Attorneys involved in trial and appeal

1. William M. Kunstler. Represented all*/ defendants**/ for the period from date of indictment, March 20, 1969, up to and including the present date. Additionally, he represented David Dellinger, Rennard Davis, Jerry Rubin and Abbott Hoffman on various occasions for the period beginning about September 1967 to the present.

2. Leonard Weinglass represented all*/ defendants for the period starting approximately March 26, 1969 (two weeks before the arraignment on April 9), up to and including the present date.

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*/ The record shows that Messrs. Kunstler and Weinglass each entered appearances for some but not all of the defendants. This was required for purposes of the trial, and such statements of representation reflected only courtroom appearances. For all other purposes, including daily consultations and preparation of the case, both attorneys represented all the defendants.

** / As the term defendants is used herein it refers to all defendants other than Messrs. Kunstler and Weinglass unless otherwise noted.

Additionally, he represented Thomas Hayden from approximately the Spring of 1966 to the present.

3. Stanley Bass and Irving Birnbaum represented all defendants for the period from the arraignment on April 9, 1969 to the conclusion of the trial.

4. Arthur Kinoy and Morton Stavis were, with respect to the entire period of Mr. Kunstler's representation of defendants herein, associated with him at the Center for Constitutional Rights and actively consulted with him on matters relating to the trial. Subsequent to the trial and up to the date herein they have represented all the defendants including Messrs. Kunstler and Weinglass. Additionally they represented David Dellinger, Rennard Davis, Jerry Rubin, and Abbott Hoffman on various occasions from about September 1967 to the present date.

5. Charles Garry represented all defendants from the time of the indictment, March 20, 1969, until approximately the first week in November, when the case of Bobby G. Seale was severed. Benjamin Dreyfus, Francis McTernan, and Allen Brotsky were partners of Mr. Garry during the foregoing period and actively consulted with him with respect to the foregoing representation.

6. Michael Kennedy, Michael E. Tigar, Dennis Roberts, and Gerald B. Lefcourt represented all defendants from the time of the arraignment on April 9, 1969 to the commencement of the trial, September 24, 1969.

7. Beth Livezey and Michael Sayer were associated with William M. Kunstler and Leonard Weinglass in their representation of all defendants in the Dellinger case from approximately two weeks before

the commencement of the trial on September 24, 1969, up to its conclusion, on or about February 15, 1970.

8. Stuart Ball was associated with William M. Kunstler and Leonard Weinglass in their representation of all defendants in the Dellinger case from approximately June 1969 up to May 1971.

9. Anthony G. Amsterdam, David Bogen, Alan Dershowitz, Herbert O. Reid, Sr., Charles Nesson, Michael E. Tigar, and William W. Brackett represented all the defendants including Messrs. Kunsiter and Weinglass from at or about the conclusion of the trial in February 1970 through the conclusion of the appeal before the Seventh Circuit on May 11, 1972.

10. James B. Moran represented all defendants except Messrs. Kunstler and Weinglass from at or about the conclu-

sion of the trial to the present.

11. Thomas P. Sullivan and John C. Tucker represented William M. Kunstler and Leonard I. Weinglass from at or about the conclusion of the trial through the conclusion of the appeal before the Seventh Circuit on May 11, 1972.

12. James Reif represented all the defendants including William Kunstler and Leonard Weinglass from in or about September 1970 until sometime in July 1972.

13. William Rossmoore and Daniel Crystal were associated with Morton Stavis during the period approximately March to May 1971 in respect to the preparation of the appellate brief.

B. Legal Workers.*/

All legal workers were associated

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*/ The inclusion of the name of Bobby G. Seale as legal worker in District Court papers was an error (omitted with fn. in Circuit Court as here).

with Messrs. Kunstler and Weinglass in the representation of all defendants for the period beginning approximately at the times indicated below and ending with the conclusion of the trial.

Stuart Albert	August, 1969
Sharon Avery	May, 1969
Tasha Dellinger	August, 1969
Lynn Fink	August, 1969
Ann Froines	August, 1969
Mike Gold	August, 1969
Susan Gregory (formerly Susan Schultz)	April, 1969
Donna Gripe	April, 1969
Judith Gumbo	August, 1969
Susan Hathaway	May, 1969
Anita Hoffman	April, 1969
Frank Joyce	August, 1969
Ronald Kaufman	August, 1969
Nancy Kurshan	April, 1969
Robert Lamb	June, 1969
Elizabeth Langer	June, 1969
Marie (Micki) Leaner	April, 1969
Linda Miner	August, 1969
Gretchen Morrison	August, 1969
Dick O'Brien	August, 1969
Dorothy Palombo	April, 1969
Abe Peck	June, 1969
Penny Puhl	April, 1969
Pamela Zumwalt	June, 1969

MORTON STAVIS
WILLIAM M. KUNSTLER
c/o Center for Constitutional
Rights
588 Ninth Avenue
New York, New York 10036

LEONARD I. WEINGLASS
2909-1/2 Ocean Front Walk
Venice, California 90291

ATTORNEYS FOR DEFENDANTS

FILED with the Court
March 26, 1973.

CONSTITUTIONAL AMENDMENTS, STATUTES AND RULES INVOLVED.

AMENDMENT IV - SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V - CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any

person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI - JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of

Counsel for his defence.

18 U.S.C.
§401. Power of court.

A court of the United States shall have power to punish by fine or imprisonement, at its discretion, such contempt of its authority, and none other, as-

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Federal Rules of Criminal Procedure
Rule 42 Criminal Contempt

(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall

state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt

the court shall enter an order fixing the punishment.